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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,046	05/31/2001	Donald E. Weder	8403.399	5014

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EXAMINER

WILLIAMSON, MICHAEL A

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/25/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/872,046

Applicant(s)

WEDER, DONALD E.

Examiner

Michael A. Williamson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on or after May 31, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 38-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 31 May 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Pending Claims

The pending claims in the instant application are 38-41. The only independent claim in the instant application is 38.

Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on May 31, 2001 have been recieved and made of record. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 1 and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koudstaal et al. (U.S. Patent 4,400,910) in view of Burton, Jr. et al. (U.S. Patent 4,888,175) and Antoon, Jr. (U.S. Patent 4,910,032).

Koudstaal et al. discloses a method of protecting plants using a decorative cover comprising a breathable packaging material having upper and lower surfaces and an outer periphery having controlled atmosphere characteristics sealable about a flower pot with a bonding material (see Abstract, col. 2, lines 5-26 and Figures 1 and 2).

Koudstaal et al. further discloses that moisture and eventually ethylene gas are exchanged with air through the microporous layer of synthetic polymeric film (see col. 3, lines 8-24). Koudstaal et al. does not disclose that the decorative cover comprises a desiccant, a non-fogging agent and an antimicrobial agent. Burton, Jr. et al. states that plants are susceptible to viruses and bacteria when packaged in plastic sheet or film (see col. 3, lines 41-46). Patentee further teaches the use of antimicrobial/biocidal agent in a package for plants (see Abstract). The advantage is to inhibit growth of viruses and bacteria in the enclosed plant and on the surface of the packaging. Antoon, Jr. teaches the use of non-fogging agents/desiccants in a package for plants that are functionally equivalent to the fillers taught in the primary reference (see Abstract and col. 4, lines 18-40). The advantage of using non-fogging agents and desiccants in a package is to

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adjust the moisture, carbon dioxide and oxygen levels in the package. Therefore, it would have been obvious to one of ordinary skill in the art to use the teaching of Burton, Jr. et al. and Antoon, Jr. in the invention of Koudstaal et al. to control the moisture, carbon dioxide and oxygen concentrations in the package, and the growth of mold, viruses and bacterial that effect the health and visibility of the packaged plant in the absence of a factual showing to the contrary or a showing of unexpected results.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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5. Claims 1 and 38-41 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 5,666,784 or claims 35-46, 62-67, 83-88 and 97-104 of U.S. Patent No. 6,382,418.

The U.S. Patents claim a method for packaging wherein the film used comprises a dessicant, a non-fogging agent, and a bonding agent or the film having a bonding material disposed on at least a portion of one of the upper and lower surfaces thereof, the bonding material containing a desiccant and at least one atmosphere control agent selected from the group consisting of an antifungal agent, an antimicrobial agent and a non-fogging agent respectively. The instant claimed method of wrapping recites a sheet of film comprising desiccant, an antimicrobial agent and at least one of a bonding material and a non-fogging agent. The instant claims are silent regarding the location of one ingredient in relation to another and recites open language. Therefore, it would have been obvious to one of ordinary skill in the art to used the ingredients in any combination including the patented combination because the instant claims are not limited by limitations recited.

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6.

Crystal Mall 1 Facsimile Center

A facsimile center has been established in Crystal Mall 1, room 7C10. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is (703) 308-4556. The new location should be used in all instances when faxing any correspondence to Group 1600. Use of the new Crystal Mall 1 center will facilitate rapid delivery of materials to the Group. The faxing of all papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989).

7. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Michael A. Williamson whose telephone number is (703) 308-1235.



Michael A. Williamson
Patent Examiner
Group 1610

Williamson030824
August 24, 2003